

be accepted as completely acquitting the respondent of every element of the charge and that until the contrary has been shown to be the case the Court must accept the truth of the statement which the respondent is alleged to have made. For this proposition the respondent relied on a passage in *Sohoni* 14th Edition at page 754 which quotes with approval from the case of *R. v. Plummer*⁽¹⁾, the following words:—

"It is a very dangerous practice to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates."

It is probable that the learned President in the first trial held that there was no case to answer because he was not satisfied that any action would follow the making of the report to the police. It may be proper for me to call for the learned President's grounds of decision and discover why he acquitted the accused respondent. If his grounds revealed that he was satisfied that the report was *prima facie* false but he acquitted the respondent for other reasons it might then be proper to hold that the subject matter of this trial was not *res judicata* and this Court could then order the second trial of the respondent to proceed.

Before I exercise my powers to call for the learned President's grounds of judgment I must be satisfied that further prosecution of the respondent is justified.

There may be occasions when it is proper to charge separately an offence which could be tried with another. It is however preferable that any such charge should be preferred at the same time as the principal charge so that it should not appear that the further proceedings are only brought because the first have failed. It is always open to the accused person to request separate trials for particular offences and for the Court so to order if satisfied that the accused would be embarrassed in his defence by dealing with all the charges at the same time, even though such trial is permitted by section 165 of the Criminal Procedure Code.

All the evidence relating to the offence before the R.I.M.V. was produced at the first trial. It is quite clear that it would have been possible to add as a third charge at the first trial the charge relating to the R.I.M.V. by virtue of section 165(i) of the Criminal Procedure Code. It is also clear that there has been multiplicity of proceedings. Indeed, I consider that these proceedings should be dismissed even if the proceedings are not already at the moment *res judicata* by reason of the provisions of paragraph 1 of the Third Schedule of the Courts Ordinance, 1948, which reads as follows:—

A "A Court may dismiss or stay proceedings where the matter in question is *res judicata* between the parties, or where by reason of multiplicity of proceedings in any Court or Courts the proceedings ought not to be continued."

B It appears to me that the prosecution, having failed in respect of the report to the constable, has brought substantially the same proceedings under a different guise. Since this further charge could have been considered at the same time as the first at the first trial, I consider that it would in view of the staleness of the offence and the expense to which the respondent has already been put be wrong to continue these proceedings and put him in jeopardy again.

C In the circumstances of this case I decline to call for the grounds of judgment in the first case and hold that the truth of the respondent's statement concerning his registration book is *res judicata* and that the plea of *autrefois acquit* is valid.

D The appeal is dismissed.

Appeal dismissed.

Solicitors: Bannon & Bailey.

Re FONG AH HEE

[R. Cr. J. (Rigby J.) October 23, 1957]

[Penang—Criminal Revision No. 31 of 1957]

F *Criminal Procedure—Imprisonment in default of payment of fine.*

Penal Code, s. 420—Cheating—Dishonestly inducing complainant to accept and to pay over in cash on "dud" cheque.

G In this revision the prisoner was serving a term of imprisonment in default of payment of fine. The brief facts which led to his conviction were that he produced a "dud" cheque to the complainant with whom he and/or his brother ran a credit account, and on the strength of that cheque dishonestly induced the complainant not only to accept it in settlement of the account owing but also to pay over to him \$426 in cash being the balance shown on the face of the cheque in excess of the amount to be settled. The learned President sentenced him to one day's imprisonment and further imposed a fine of \$1,426 or one year's imprisonment in default of payment.

H Held: in the circumstances of the case the imposition of such a fine was virtually tantamount to a peremptory sentence of twelve months' imprisonment and such sentence was excessive.

I CRIMINAL REVISION.

Rigby J. : — This case has come to my attention in consequence of a perusal of the Monthly September Return from the Superintendent of Prisons of persons serving terms of imprisonment in default of payment of fines.

The prisoner was convicted by the learned President of the Sessions Court of the offence of cheating, contrary to section 420 of the Penal Code.

The brief facts of the case were that the prisoner produced a "dud" cheque to the complainant, a female shopkeeper, with whom the prisoner and/or his brother ran a credit account, and on the strength of that cheque dishonestly induced the complainant not only to accept it in settlement of the account owing but also to pay over to him \$426 in cash being the balance shown on the face of the cheque in excess of the amount to be settled.

It is apparent from the record that the prisoner put forward in his defence every conceivable lie his distorted imagination could conjure up and attempted to blacken the character of practically every witness called for the prosecution.

The learned President sentenced him to one day's imprisonment and further imposed a fine of \$1,426, or one year's imprisonment in default of payment. Out of the fine, if paid, \$426 was to be paid to the complainant as compensation.

It was, and is, clear that the prisoner was not in a financial position to raise such a sum of money, and the imposition of such a fine in such circumstances was virtually tantamount to a peremptory sentence of twelve months' imprisonment. The prisoner is aged 26, and had never been in trouble before. Making every allowance for the despicable nature of the offence committed the sentence is, in my view, excessive.

The prisoner has now served approximately five weeks of his sentence. The fine will be reduced to one of \$500 or four months' imprisonment in default of payment. Out of the fine, if paid, \$426 will be paid as compensation to the complainant.

Order accordingly.

S. E. MIZRAHIE v. STANTON NELSON & CO. LTD.

[C. A. (Whyatt C.J., Tan Ah Tah and Wee Chong Jin JJ.)
April 25, 1958]

[Singapore — Appeal No. 15 of 1957]

Contract — Gaming and Wagering contract — Rubber Dealers Ordinance (Cap. 199), s. 3 — Forward contracts — Civil Law Ordinance (Cap. 24), s. 6.

The respondents, who were plaintiffs in the Court of the first instance were rubber brokers and members of the Singapore Chamber of Commerce Rubber Association in the class of brokers. They claimed damages from the appellant for breach of several contracts in writing for purchase and sale of rubber or in the alternative the balance of expense incurred by them and

A agreed, alternatively reasonable remuneration earned by them in respect of services rendered as the defendant's brokers.

All the contracts in this case, subject to a few exceptions were F.O.B. contracts involving delivery at the time they were made.

B The appellant raised the defence of illegality which was based on two grounds: (i) that the appellant was not licensed under the Rubber Dealers Ordinance to purchase rubber; and (ii) that the contracts were void as gaming and wagering contracts under section 6 of the Civil Law Ordinance.

C The Court of first instance held that the words "purchase rubber" as used in section 3 of the Rubber Dealers Ordinance refer to present purchases and not to forward or executory contracts, and that therefore the defendant not being a holder of a licence under the Ordinance did not render the contracts illegal. It was also held that the contract was not a wagering contract.

On appeal, the Court of Appeal reversing the decision reported in (1958) M.L.J. 45,

Held: the contracts were not real contracts for the sale of rubber, but were merely colourable transactions, to enable the appellant to gamble in differences, and were void.

D *Thacker v. Hardy*⁽²⁾, *Forget v. Ostigny*⁽⁴⁾, *Weddle, Beck & Co. v. Hackett*⁽¹⁾, *Woodward v. Wolfe*⁽⁵⁾, *Syn Thong & Co. v. Tong Joo (Hoo) & Co.*⁽⁶⁾, and *Baker v. Sharma*⁽⁷⁾ distinguished.

No opinion was expressed as to whether the contracts were void because the appellant was not licensed to purchase rubber under the Rubber Dealers Ordinance.

E *Cases referred to:—*

- (1) *Weddle, Beck & Co. v. Hackett* (1929) 1 K.B. 321.
- (2) *Thacker v. Hardy* 4 Q.B.D. 685.
- (3) *Universal Stock Exchange v. Strachan* (1896) A.C. 166.
- (4) *Forget v. Ostigny* (1895) A.C. 318.
- (5) *Woodward v. Wolfe* (1936) 3 All E.R. 529.
- (6) *Syn Thong & Co. v. Tong Joo (Hoo) & Co.* (1929) S.S.L.R. 39.
- (7) *Baker v. Sharma* K.L. — Civil Suit No. 164 of 1936 — unreported. 3 M.L.J. 15.

COURT OF APPEAL, appeal from the decision of Buttrose J. reported in (1958) M.L.J. 45.

H S. H. D. Elias for the appellant-defendant.

C. H. Withers-Payne for the respondent-plaintiffs.

The judgment of the Court of Appeal was delivered by

I **Whyatt C.J.** : — This is an appeal from a judgment of Mr. Justice Buttrose in which it was held that the plaintiffs were entitled to recover from the defendant the sum of \$219,590 by way of indemnity for expenses incurred and for commission earned while acting as the defendant's brokers for the purchase and sale of rubber F.O.B. Singapore. The